

LIBRARY
SUPREME COURT U. S.

Office - Supreme Court, U. S.
RECEIVED
FEB 19 1949

SUPREME COURT OF THE UNITED STATES

— OCTOBER TERM, 1948

No. 244

LIONEL G. OTT, COMMISSIONER OF PUBLIC FI-
NANCE AND EX-OFFICIO CITY TREASURER OF
THE CITY OF NEW ORLEANS

versus

MISSISSIPPI VALLEY BARGE LINE COMPANY,
AMERICAN BARGE LINE COMPANY and
UNION BARGE LINE CORPORATION

Petition For Rehearing

ARTHUR A. MORENO,
Attorney for Petitioners.

SELIM B. LEMLE,
LOUIS G. LEMLE,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 244

LIONEL G. OTT, COMMISSIONER OF PUBLIC FINANCE AND EX-OFFICIO CITY TREASURER OF THE CITY OF NEW ORLEANS

versus

MISSISSIPPI VALLEY BARGE LINE COMPANY,
AMERICAN BARGE LINE COMPANY and
UNION BARGE LINE CORPORATION

Petition For Rehearing

The petition for rehearing of the Mississippi Valley Barge Line Company, the American Barge Line Company and the Union Barge Line Corporation with respect represents:

(1) That on the 7th day of February, 1949, this Honorable Court decided the above matter and reversed the judgment of the United States Circuit Court of Appeals for the Fifth Circuit.

(2) That it was strongly urged upon the Court the fact that the United States Circuit Court of Appeals, from which the appeal was taken, did not hold the statute unconstitutional, but, on the contrary, held it constitutional and applied it to the case of the DeBardeleben Coal Corporation in the same opinion, which upheld the contention of your petitioners herein.

(3) That the question presented is jurisdictional and fundamental; that notwithstanding it is jurisdictional and should have been considered at the threshold of the case, that, nevertheless, that question was not passed upon nor decided, but the Court proceeded to consider the case and decided it on other grounds.

(4) That the record does not show that there was an average number of towboats and barges of petitioners in the State of Louisiana during the years in which the assessments were made; that the record discloses clearly that there was not an average number of towboats and barges of petitioners in Louisiana within the taxable years, but, notwithstanding that fact, the court decided the case on a fact not shown by the record, but disputed by the record.

(5) That the administrative procedure provided by the State of Louisiana is for the correction of assessments made under proper authority, but, that in this case, the Louisiana Tax Commission did not have authority to make the assessments on the percentage basis, and, therefore, the assessments were not legally made, but unconstitutionally enforced by the collection of the taxes.

(6) That your petitioners do not claim immunity from taxation because of being engaged in interstate commerce, but contend that the assessments included property which had never been in the State of Louisiana and that taxes were collected on assessments which included towboats and barges belonging to petitioners which had never come into the State of Louisiana.

(7) That the taxes were based on assessments which included all of the property of petitioners, regardless of whether or not it had come into Louisiana, so that the decision is in conflict with the decisions in *Union Tank Line Company v. Wright*, 249 U. S. 275 and *Johnson Oil Company of Oklahoma*, 290 U. S. 158, both cited in the brief of petitioners.

WHEREFORE, petitioners respectfully contend that they are entitled to a rehearing, and more particularly, on the jurisdictional question which was presented and not considered, and so pray for such rehearing, even if limited to the jurisdictional question.

Respectfully submitted,

ARTHUR A. MORENO,
Attorney for Petitioners.

SELIM B. LEMLE,
LOUIS G. LEMLE,
Of Counsel.